

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3071
Administrative Law Judge Division
September 20, 2001

R E S O L U T I O N

RESOLUTION ALJ 176-3071. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on September 20, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3071 (09/20/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-08-037 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902 M) for Authority pursuant to Public Utilities Code Section 851 to Exchange Radio Frequencies and Equipment	Ratesetting	Ratesetting	NO
A01-08-038 FIRSTWORLD ORANGE COAST, Emergency Application; (U-5782-C), for Authority to Transfer Customers and Terminate Local and Interexchange Services	Ratesetting	Ratesetting	NO
A01-08-039 MITTOW, DANIEL O., dba DAVIS AIRPORTER, SCHAFFER-MITTOW, JANE, dba DAVIS AIRPORTER, for Authority to Establish a Zone of Rate Freedom	Ratesetting	Ratesetting	NO
A01-08-043 ICG TELECOM GROUP, INC., XO CALIFORNIA, INC., for Modification of Decision 94-09-065 so that Competitive Local Carriers and Nondominant Interexchange Carriers may Withhold Customer Names from Filings of General Order No. 96-A Contracts and May also Make such Contracts Effective on 14 Days' Notice	Quasi- legislative	Quasi- legislative	NO
A01-09-003 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-E), in the 2001 Annual Transition Cost Proceeding for the Record Period July 1, 2000 through June 30, 2001	Ratesetting	Ratesetting	YES
A01-09-004 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), to Review and Recover Transition Cost Balancing Account Entries from July 1, 2000 through June 30, 2001 and Various Generation-Related Memorandum Account Entries	Ratesetting	Ratesetting	YES
A01-09-005 SAN DIEGO GAS & ELECTRIC COMPANY, (U902-E), in the Fourth Annual Transition Cost Proceeding Addressing the Transition Cost Balancing Account [TCBA]	Ratesetting	Ratesetting	YES
A01-09-006 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E), in the 2000/2001 Revenue Adjustment Proceeding	Ratesetting	Ratesetting	YES

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3071 (09/20/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-09-007 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E), regarding the Construction and Operation of a Second 230 kV Circuit on the Existing Transmission Line from Imperial Valley Substation to the International Border to Interconnect with the Commission Federal De Electricidad, Baja California Norte System	Ratesetting	Ratesetting	YES
A01-09-008 CITY OF MONTCLAIR, for an Order Authorizing Construction of a Crossing at separated grades between Monte Vista Avenue and the tracks of the Union Pacific Railway Company, sometimes referred to as the Monte Vista Avenue Overpass [PUC No. B-517.4 and 3-35.0]	Ratesetting	Ratesetting	NO
A01-09-009 BROWN, MORGAN D. AND ROBERTA, dba ETA TRANSPORTATION, LLC, JARAMILLO, ROSS R., dba ETA TRANSPORTATION, LLC, for authority to operate as a passenger stage corporation between points in San Diego, Orange and Los Angeles Counties, San Diego, Carlsbad, Orange and Los Angeles Airports, and to establish a zone of rate freedom	Ratesetting	Ratesetting	NO
A01-09-010 STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, for authorization to Replace existing crossing at separated grade known as Tehachapi Creek Bridge and Overhead and to Realign State Route 202. The concerned tracks are the property of the Union Pacific Railroad Company located in the City of Tehachapi, Kern County, State of California	Ratesetting	Ratesetting	NO
A01-09-012 CITY OF SAN DIEGO, for an order authorizing modification of an existing at-grade crossing on three light rail vehicle tracks and one heavy rail track of the Metropolitan Transit Development Board, and one heavy rail track of the Burlington Northern and Santa Fe Railway Company, at Park Boulevard, in the City of San Diego, San Diego County, California	Ratesetting	Ratesetting	YES
A01-09-014 TLEGENIUS, INC., for Registration an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3071 (09/20/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-09-015 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-E), to Change Distribution Level Standby Rates As Required by CPUC Decision 01-07-027	Ratesetting	Ratesetting	YES
A01-09-016 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-M), Proposing a Standby Rate Design for Non-Exempt Distributed Generation	Ratesetting	Ratesetting	YES
A01-09-017 SOUTHERN CALIFORNIA EDISON COMPANY, for Approval of Interim Standby Rates	Ratesetting	Ratesetting	YES
A01-09-018 TAC LICENSE CORP., TELIGENT SERVICES, INC., for Ex Parte Grant of Authority Pursuant to Public Utilities Code Section 851 and 854 Necessary to Consummate a Chapter 11 Re-Emergence Plan	Ratesetting	Ratesetting	NO
A01-09-020 SINGH, JASWINDER/KAUR, HARDIP, dba AMERICAN EXECUTIVE AIRPORT PICKUP, INC., THAKUR, KULDIP KUMAR, dba AMERICAN EXECUTIVE AIRPORT PICKUP, INC., Kuldip Kumar Thakar, dba American Executive Airport Pickup, Inc. to sell, and of Jaswinder Singh and Hardip Kaur (husband and wife) to acquire, American Executive Airport Pickup Inc., and to extend a Certificate of Public Convenience and Necessity to Operate as a Passenger Stage Operation between points in Alameda, San Mateo and Santa Clara Counties, on the one hand, and the Oakland, San Jose and San Francisco International Airports, on the other hand	Ratesetting	Ratesetting	NO